

AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
ENSCO, INC.

A.G. CONTRACT NO. 87-1465
ECS File: IGA-88-05 87-62
Project S-987-501, -502
Fund: 82512
Maricopa-Mobile, Units I & II

THIS AGREEMENT entered into this 13th day of June, 1987, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION, hereinafter called "State", and ENSCO, INC., an Arkansas corporation, hereinafter called "ENSCO".

WHEREAS, State is empowered by Section 28-108 (A24) Arizona Revised Statutes to enter into this agreement and has, by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement, and the Director of the Arizona Department of Transportation has delegated to the undersigned the authority to execute same on behalf of State; and

WHEREAS, ENSCO desires to enter into this agreement and has, by its letter of authority, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute same on behalf of ENSCO; and

WHEREAS, State seeks to improve the safety of the public traveling the state roadway system and desires to improve the Maricopa - Mobile Highway (S.R. 238) from milepost 24.0 to a newly relocated intersection with the Maricopa Highway north of the town of Maricopa; and

WHEREAS, ENSCO, under separate contract with the State of Arizona Department of Health Services has agreed to finance, design, construct, operate and maintain a hazardous waste disposal facility and has further agreed to participate with State in the improvement of the Maricopa - Mobile Highway in conjunction with development of said hazardous waste disposal facility; and

WHEREAS, State agrees to construct roadway improvements to the Maricopa - Mobile Highway from milepost 24.0 to approximate milepost 42.3 and a realigned portion of said highway from milepost 42.3 easterly to a new intersection with the Maricopa Highway; and

WHEREAS, the State estimates that the total cost to construct said improvements is FIVE MILLION THREE HUNDRED ELEVEN THOUSAND DOLLARS (\$5,311,000) and State and ENSCO agree to share in the cost of the project as set forth below:

1. State shall contribute 71.29% of the total cost to construct said roadway improvements; this percentage being equal to the proportionate share to construct 14.9 miles of the total 20.9 miles of improved and new roadway.

NO.	<u>12652</u>
FILED WITH SECRETARY OF STATE	
Date Filed	<u>1-8-88</u>
<u>Rose Mafford</u> Secretary of State	

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2. ENSCO shall contribute 28.71% of the total cost to construct said roadway improvements; this percentage being equal to the proportionate share to construct 6.0 miles of the total 20.9 miles of improved and new roadway.

3. ENSCO agrees to deposit ONE MILLION FIVE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED DOLLARS (\$1,524,600) toward the project costs which is an estimate of ENSCO's proportionate share for the construction of the project improvements.

THEREFORE, the parties hereto agree as follows:

STATE SHALL:

1. Prepare Plans for all project improvements.
2. Acquire all rights-of-way for the project.
3. Follow established State procedures for the bidding of the project and immediately after a construction contract is awarded, proceed with the construction of the project.
4. Contract for construction of all improvements, supervise construction, make all payments to the contractor, and approve and accept the new facilities.
5. Within 10 days of receipt of the monthly pay estimate from the construction contractor, submit to ENSCO an itemized bill for their proportionate costs and a copy of the contractor's monthly pay estimate.
6. Afford ENSCO opportunities to review and comment on the Plans for the project improvements, bids received from prospective contractors, the construction contract itself, and otherwise endeavor to keep ENSCO informed as to the project's status, progress, delays, cost overruns, etc.

ENSCO SHALL:

1. Deposit in an escrow account among State, ENSCO and Valley National Bank cash in the amount of ONE MILLION FIVE HUNDRED TWENTY FOUR THOUSAND SIX HUNDRED DOLLARS (\$1,524,600), ENSCO's proportionate share for the construction of the road improvements as estimated by State. The escrow shall state that said money remains on deposit with Valley National Bank until completion of construction, subject to and consistent with the terms and conditions of agreement between ENSCO and the State of Arizona acting by and through its Department of Health Services, dated

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July 30, 1986, as amended. The escrow account will further allow Valley National Bank to transfer funds to State in an amount equal to the monthly pay estimate for construction costs assigned to ENSCO in the event that ENSCO fails to transfer such funds in a timely manner in accordance with other terms of this agreement. The above-mentioned cash deposit shall be made prior to award of the construction contract by the State Transportation Board for said improvements to the Maricopa - Mobile Highway.

2. During construction, transfer funds equal to the monthly pay estimate prepared by the State for the amount of proportionate construction costs assigned to ENSCO as outlined above. Said Transfer shall be made by ENSCO within ten days after receipt of monthly pay estimate from State.

3. In addition to all costs as heretofore mentioned, pay the specified proportionate amount of all reasonable costs related to construction change orders, delays, or claims for extra compensation made by the contractor.

THE PARTIES MUTUALLY AGREE AS FOLLOW:

1. State may draw the monthly pay estimate amount from the escrow account deposited by ENSCO in the event ENSCO fails to transfer such funds in a timely manner as provided herein.

2. In the event any controversy arises out of this Agreement and relating to terms or provisions of this Agreement, the parties agree as follows:

(a) In the event of a dispute between State and ENSCO subsequent to entry into the construction contract for the project improvements, an independent third party shall be appointed by the parties as arbitrator with regard to the dispute and the decision of such arbitrator shall be deemed binding on the parties.

(b) In the event the parties cannot agree upon the selection of an independent third party arbitrator within thirty days, the matter shall be referred to the American Arbitration Association, Construction Arbitration Division for determination. A determination by the American Arbitration Association shall be binding upon the parties. The parties agree that a hearing will be requested within 30 days from the demand for the American Arbitration Association arbitration.

3. The parties agree that all costs incurred relating to the independent third party arbitrator of the American Arbitration Association, Construction Arbitration Division shall be borne equally by the two parties.

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4. To the extent permitted by law, State and ENSCO agree to defend, indemnify, and hold harmless each other and their agents, officials, employees and subsidiaries, from and against any and all claims, actions, demands, liability, damage, cost and expense of whatsoever character whether direct or indirect, or consequential, including loss, damage to property of either party hereto or of their persons and for the injury or death to any or all persons caused by or attributable to the negligence or fault of State or ENSCO, their employees or agents. As to any liability claims where the parties hereto may be jointly at fault, whether or not a named defendant to an action, the parties agree that they will share in any settlement or judgment in the amount that is proportionate to the degree of negligence or fault of the respective parties as agreed to between them or adjudicated by the courts.

5. In the event the contractor fails to complete construction, State agrees to complete the construction, utilizing ENSCO's proportionate share of funds, State funds, and/or the surety bond posted by the contractor.

THIS AGREEMENT shall remain in full force and effect until completion of said construction project as aforesaid.

THIS AGREEMENT shall become effective on the date of filing same with the Secretary of State.

Both parties hereto acknowledge that this agreement is subject to cancellation by the Governor pursuant to the provisions of Section 38-511 Arizona Revised Statutes.

Attached hereto and incorporated herein by reference is a copy of State's Resolution authorizing entry into this agreement, a copy of ENSCO's letter of authority signed by its designated representatives authorizing entry into this agreement and stating that said agreement is in proper form, and a copy of the Attorney General's Agreement Determination.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

ENSCO, INC., an Arkansas
corporation

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION


BY: 

BY: 

TITLE: CHIEF FINANCIAL OFFICER

W.O. Ford
State Engineer

ATTEST: 



LETTER OF AUTHORITY OF ENSCO, INC.
OFFICERS CERTIFICATE

The undersigned, Daniel M. Traylor, does hereby certify, confirm and assure as follows:

1. The undersigned is Assistant Secretary and Corporate Counsel for ENSCO, Inc., an Arkansas corporation.

2. This Certificate is for the use and benefit of the State of Arizona, Department of Transportation - Highways Division and the State of Arizona, Department of Health Services.

3. The following is a true and correct recitation of a resolution duly adopted by the Board of Directors of ENSCO, Inc. by Written Action as permitted by the Arkansas Business Corporation Act dated Monday, June 1, 1987:

RESOLVED that Jack W. Forrest, the Company's Chief Financial Officer and Vice President - Finance, is hereby authorized to execute for and on the behalf of ENSCO, Inc. an agreement between the State of Arizona and ENSCO, Inc., a copy of which is attached and incorporated herein as Exhibit A and is further authorized in his official capacity to do all things necessary or desirable to effectuate the terms thereof, including, but not limited to, the deposit of up to \$2 million into an escrow interest bearing account approved by counsel for the Company.

4. The above-mentioned resolution is in full force and effect as of the date hereof.

ENSCO, INC.

By: 

Daniel M. Traylor
Corporate Counsel and
Assistant Secretary



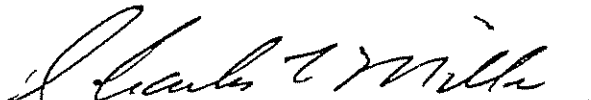
PROJECT: Maricopa - Mobile

SECTION: S.R. 238

RESOLUTION

BE IT RESOLVED on this 6th day of June, 1987, that I, CHARLES L. MILLER, as Director, ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the State of Arizona that the DEPARTMENT OF TRANSPORTATION, acting by and through the Highways Division, enter into an Agreement with ENSCO, INC., an Arkansas corporation, for construction of roadway improvements to the Maricopa - Mobile Highway from milepost 24.0 to approximate milepost 42.3 and a realigned portion of said highway from milepost 42.3 easterly to a new intersection with the Maricopa Highway.

THEREFORE, authorization is hereby given to draft said Agreement which, upon completion, shall be submitted for approval and execution by the State Engineer.


Charles Miller, Director
Arizona Department of Transportation

